



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

ND Oil PAC
Jeff Herman, President
P. O. Box 1395
Bismarck, ND 58502

FEB - 5 2016

RE: MUR 6931

Dear Mr. Herman:

On April 17, 2015, the Federal Election Commission notified ND Oil PAC of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On December 10, 2015, based upon the information contained in the complaint, and information provided by you, the Commission decided to dismiss the allegations that a contribution made by Dean Potter and accepted by ND Oil PAC violated 52 U.S.C. § 30121(a). Accordingly, the Commission closed its file in this matter on January 21, 2016.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Ana Pena-Wallace, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel

A handwritten signature in black ink, appearing to read "Jeff S. Jordan", is written over the typed name and title.

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4 RESPONDENTS: Dean Potter MUR 6931
5 ND Oil PAC
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7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission
9 (the "Commission") by Daniel G. Hinnenkamp on April 10, 2015, alleging violations of the
10 Federal Election Campaign Act of 1971, as amended (the "Act") by Dean Potter and ND Oil
11 PAC. For the reasons set forth below, the Commission exercised its prosecutorial discretion and
12 dismissed the allegation that the Respondents violated 52 U.S.C. § 30121(a).

13 **II. FACTUAL AND LEGAL ANALYSIS**

14 **A. Factual Background**

15 Based on information obtained from the North Dakota Secretary of State's website, the
16 complaint alleges that Dean Potter made, and ND Oil PAC accepted, a contribution from a
17 foreign national, in violation of the Act: specifically, a \$500 contribution made on May 7, 2014,
18 from Dean Potter, an individual with a Canadian mailing address.

19 The ND Oil PAC and contributor Dean Potter submitted responses to the complaint. ND
20 Oil PAC states that it understood that because the committee was a state PAC, and based on
21 guidance provided by the North Dakota Secretary of State, "that the contribution was not in
22 violation" of the law.¹ Nevertheless, the PAC refunded the \$500 contribution it had received
23 from Potter and submitted proof of that refund in an attachment to its response.² Potter's

¹ ND Oil PAC Resp. (Apr. 24, 2015).

² ND Oil PAC Resp., Attach. (showing that the refund was sent on April 22, 2015).

1 response confirms that he is a Canadian citizen.³ He explains that the contribution came about in
2 connection with his attendance at a petroleum conference in North Dakota and that he did not
3 intend to violate any Federal laws or regulations.⁴ The contribution apparently was related to an
4 “evening social event” hosted by the ND Oil PAC during the 2014 Williston Basin Petroleum
5 Conference.⁵

6 **B. Legal Analysis**

7 Under the Act, it is unlawful for a foreign national, directly or indirectly, to make a
8 contribution or donation of money or other thing of value “in connection with a Federal, State, or
9 local election.”⁶ In addition, no person may solicit, accept, or receive a foreign national
10 contribution or donation.⁷ A “foreign national” is an individual who is not a citizen of the United
11 States or a national of the United States and who is not lawfully admitted for permanent
12 residence.⁸ If a committee treasurer, based on new evidence not available to the political
13 committee at the time of receipt and deposit, discovers that an illegal contribution, such as one
14 from a foreign national, was accepted, the treasurer shall refund the contribution to the
15 contributor within thirty days of the date on which the illegality is discovered.⁹

³ Potter Resp. at 1 (Apr. 29, 2015).

⁴ *Id.* at 1, 3-4. Potter also provided a copy of the check that ND Oil PAC sent to him refunding the contribution. *Id.*, Attach.

⁵ The letter accompanying the refund check also referenced the PAC’s “May 2014 social.” *Id.* at 3, Attach.

⁶ 52 U.S.C. § 30121(a)(1)(A); 11 C.F.R. § 110.20(b).

⁷ 52 U.S.C. § 30121(a)(2). The Commission’s regulations employ a “knowingly” standard here. 11 C.F.R. § 110.20(g). A person knowingly accepts a prohibited foreign national contribution or donation if that person has actual knowledge that funds originated from a foreign national; is aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the funds originated from a foreign national, or is aware of facts that would lead a reasonable person to inquire whether the funds originated from a foreign national but failed to conduct a reasonable inquiry. *Id.* § 110.20(a)(4).

⁸ 52 U.S.C. § 30121(b)(2); 11 C.F.R. § 110.20(a)(3)(ii).

⁹ 11 C.F.R. § 103.3(b)(2).

1 It appears that the contribution that ND Oil PAC accepted from Potter violated the
2 prohibition on contributions by foreign nationals under the Act and Commission regulations.
3 However, ND Oil PAC claims to have relied on guidance from the North Dakota Secretary of
4 State when it accepted the contribution and it promptly refunded Potter's \$500 contribution
5 shortly after being notified of the complaint in this matter.

6 Based on the available information, it appears that the violation may have been
7 inadvertent in nature. In light of the fact that the illegal contribution was refunded within the
8 thirty-day time period required by Commission regulations, further enforcement resources are
9 not warranted in this matter. Accordingly, the Commission has chosen to exercise its
10 prosecutorial discretion to dismiss the allegations that Dean Potter and ND Oil PAC violated
11 52 U.S.C. § 30121(a) in connection with Potter's contribution.¹⁰

¹⁰ *See Heckler v. Chaney*, 470 U.S. 821 (1985).